

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA

V. CRIMINAL NO. 3:16cr62-HTW-LRA

LARRY LUSTER

MOTION TO SUPPRESS ALL EVIDENCE

Comes now Defendant Larry Luster and files this Motion to Suppress All Evidence. In support of this Motion, he presents the following:

As the Court and the parties are aware, Mr. Luster was charged with the same felon in possession of a firearm crime in case number 3:13cr40-HTW-LRA (hereinafter “initial case” or “initial Indictment”) that he is charged with in the subject case, case number 3:16cr62-HTW-LRA (hereinafter “instant case” or “instant Indictment”). The initial Indictment was dismissed without prejudice under Mr. Luster’s Speedy Trial Act motion. Then the prosecution filed the instant Indictment realleging the same charge.

In the initial case, the defense filed a Motion to Suppress All Incriminating Evidence. In the Motion, the defense argued that Mr. Luster’s constitutional right to be free from unreasonable searches and seizures was violated under recent Supreme Court holdings in *Rodriguez v. United States*, 135 S.Ct. 1609 (2015). *See*

Motion to Suppress All Incriminating Evidence, attached hereto as Exhibit 2. The crux of the argument is that the police officers unconstitutionally overextended Mr. Luster's detention when it held him for a long period of time, without probable cause or reasonable suspicion, until a K-9 unit arrived to sniff-search his vehicle. All of the facts stated, and arguments asserted, by Mr. Luster in the Motion to Suppress Incriminating Evidence (attached as Exhibit 2) are adopted herewith.

A number of pleadings were filed and a number of hearings occurred in relation to the Motion to Suppress. The Court denied the Motion via a bench ruling at the conclusion of the final hearing on the issue, which was on May 24, 2016. No written order was entered.

Based on the pleadings presented to the Court in the initial case and the arguments presented at the hearings during the initial case, Mr. Luster asks the Court to grant the instant Motion to Suppress All Evidence. Suppression of the evidence will require dismissal of the case.

In support of this Motion, all pleadings filed by both parties in the initial case in relation to the Motion to Dismiss All Incriminating Evidence are attached hereto as Exhibits. Also, the transcripts of all hearings in the initial case that relate to the Motion to Dismiss All Incriminating Evidence are attached hereto as Exhibits. The Exhibits are:

Exhibit 1: Docket Sheet in case number 3:13cr40-HTW-LRA

Exhibit 2: Motion to Suppress All Incriminating Evidence filed by Mr. Luster

Exhibit 3: Response to Motion to Suppress filed by the prosecution

Exhibit 4: Rebuttal Supporting Motion to Suppress All Incriminating Evidence
filed by Mr. Luster

Exhibit 5: Sur-Rebuttal Supporting Motion to Suppress All Incriminating
Evidence filed by Mr. Luster

Exhibit 6: Government's Exhibit List in relation to the suppression hearings

Exhibit 7: Transcript of the motion hearing on November 30, 2015

Exhibit 8: Transcript of the Motion Hearing on December 1, 2015

Exhibit 9: Transcript of the Motion Hearing on May 23, 2016

Exhibit 10: Transcript of the Motion Hearing on May 24, 2016

In this Motion to Suppress All Evidence, Mr. Luster adopts the arguments made and the evidence presented in:

- his Motion to Suppress All Incriminating Evidence (Exhibit 2);
- his Rebuttal Supporting Motion to Suppress All Incriminating Evidence (Exhibit 4);
- his Sur-Rebuttal Supporting Motion to Suppress All Incriminating Evidence (Exhibit 5);
- the transcript of the motion hearing on November 30, 2015 (Exhibit 7);
- the transcript of the motion hearing on December 1, 2015 (Exhibit 8);

- the transcript of the Motion Hearing on May 23, 2016 (Exhibit 9);
- the transcript of the Motion Hearing on May 24, 2016 (Exhibit 10).

WHEREFORE, Defendant Larry Luster respectfully asks this Court to grant his Motion to Suppress All Evidence.

Respectfully submitted, this the 23rd day of September, 2016.

s/ S. Dennis Joiner

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CERTIFICATE OF SERVICE

I, S. Dennis Joiner, certify that on September 23, 2016, this Motion was filed with the Clerk of the United States District Court for the Southern District of Mississippi, using the electronic case filing system, which in turn sent an electronic copy of this Motion to all attorneys of record in this case.

s/ S. Dennis Joiner

S. DENNIS JOINER

Attorney for Defendant